




J. Craig Whitley
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

In re:)
)
ALLIANCE LEASING CORPORATION, a Nevada)
Corporation *dba* AIRLINK CORPORATION and)
TURBO LEASING CORPORATION,)
)
Debtor.)
_____)
DAVID T. CLEARY, *Trustee*,)
)
Plaintiff,)
)
v.)
)
KAY POLHILL *dba* POLHILL AND ASSOCIATES,)
)
Defendant.)
_____)

Miscellaneous Proc.
No. 03-00002

ORDER

THIS MATTER came before the Court upon the filing of Correspondence entitled "Notice of Renewal of Judgment, and Proof of Service by Mail," by the Plaintiff's Assignee, James W. Hodges, on July 12, 2012, in the above-captioned miscellaneous proceeding. The Notice refers to a Judgment that was docketed in the underlying proceeding in the Bankruptcy Court for the Southern District of California on

January 8, 2003, against the Defendant, and notes that the Judgment has been renewed by the same Court in the sum of \$30,018.20 as of May 9, 2012.

The cover sheet to the Correspondence requests that these documents be filed, and that conformed documents be returned in a stamped, self-addressed envelope. Mr. Hodges included a check, which states on the face of it: "Not to exceed Twenty-Five and 00/100 Dollars." The Certificate of Service shows that Kay Polhill, individually and *dba* Polhill and Associates, was served with the Correspondence by mail.

It appears the Plaintiff's Assignee seeks to renew the original registered Judgment against the Defendant in order to maintain a lien against, and potentially to execute against, the Defendant's North Carolina real property after the original Judgment expires. In an attempt to accomplish this goal, Mr. Hodges obtained the Renewal of Judgment in the Bankruptcy Court for the Southern District of California (apparently on a summary application) and has attempted to file a Notice of that Renewed Judgment with this Court. However, his efforts would appear to be defective for a couple reasons.

Pursuant to 28 U.S.C. § 1963, a money judgment entered in one federal court may be registered in any judicial district by filing a certified copy of that judgment in another district. That judgment "shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner." 28 U.S.C. § 1963. This appears to be the method originally used when the Certification of Judgment for Registration in Another District was filed on June 9, 2003, with this Court.

However, we must also consider Bankruptcy Rule 7069, which adopts Federal Rule of Civil Procedure 69. Rule 69 states that, absent a federal statute to the contrary,

post-judgment supplemental practice in the federal courts should emulate state procedures. Fed. R. Civ. P. 69(a).

In North Carolina, “[t]here is no procedure now recognized . . . by which a judgment may be ‘renewed.’” Raccoon Val. Inv. Co. v. Toler, 232 S.E.2d 717, 718 (N.C. Ct. App. 1977). Instead, “the only procedure now recognized by which the owner of a judgment may obtain a new judgment for the amount owing thereon is by an independent action on the prior judgment, which independent civil action must be commenced and prosecuted as in the case of any other civil action brought to recover judgment on a debt.” Id. (citing Reid v. Bristol, 86 S.E.2d 417 (N.C. 1955)); see also Norman Home Furnishings, Inc. v. Mayo, 625 S.E.2d 202 (N.C. Ct. App. 2006) (unpublished table decision) (citing Reid v. Bristol, 86 S.E.2d at 419) (“The only procedure which may be used to enforce a dormant judgment that was never executed is through the institution of an independent action commenced by the issuance of a summons and the filing of a complaint within 10 years from the issuance of the original judgment.”).

In this case, the original Judgment was entered in the Southern District of California Bankruptcy Court on January 8, 2003; the lien created by registration will expire in North Carolina ten (10) years from the date of rendition of that original Judgment, i.e., January 8, 2013. See Powles v. Kandasiewicz, 886 F.Supp. 1261, 1266 (W.D.N.C. 1995) (noting that if the plaintiff had properly registered her judgment from an Alabama federal district court with the North Carolina federal district court prior to the expiration of the North Carolina limitation, she would then have had up to ten years from the original judgment within which to enforce that judgment); see also Matanuska Val. Lines, Inc. v. Molitor, 365 F.2d 358, 359-60 (9th Cir. 1966), cert. denied, 386 U.S. 914

(1967) (“It has long been established that the enforcement of a judgment of a sister state may be barred by application of the statute of limitations of the forum state.”).

If the Plaintiff’s Assignee instead chose to pursue relief in a North Carolina state court under the Uniform Enforcement of Foreign Judgments Act, he would need to follow a similar procedure.

Accordingly, whether in a North Carolina federal or state court, if the judgment creditor is to “renew” this registered Judgment, he must sue on it. The judgment debtor must be served with a complaint, summons, and affidavit, as well as be afforded an opportunity to defend.

Furthermore, even if the procedure used by Mr. Hodges had been an effective method, the enclosed check was not sufficient. Mr. Hodges did not provide sufficient funds to cover a filing fee.

The Court elects to reopen the above-captioned miscellaneous proceeding for the limited purposes of (1) entering Mr. Hodges’ Correspondence on the docket to demonstrate receipt of the same, and (2) entering this Order. This Order is to be served on both the Plaintiff’s Assignee and the Defendant. Upon entry of this Order and expiration of the appeal period, the Clerk shall again close this miscellaneous proceeding. Finally, the Court directs the Clerk to return the Correspondence and uncashed check to Mr. Hodges via the self-addressed envelope he provided.

SO ORDERED.

**This Order has been signed electronically.
The judge’s signature and the court’s seal
appear at the top of the Order.**

United States Bankruptcy Court